

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GOOD GEORGE LLC., an Oregon limited
liability company,

Plaintiff,

v.

THE CINCINNATI INSURANCE
COMPANY, an Ohio corporation,

Defendant.

Case No.

COMPLAINT

(Breach of Contract; Breach of Covenant of
Duty of Good Faith and Fair Dealing;
Declaratory Judgment)

**CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION**

Amount Claimed: \$500,000

Statutory Fee Authority: ORS 21.160(1)(C)

Filing Fee: \$594

Plaintiff Good George LLC alleges as follows:

PARTIES

1.

Good George LLC (“Good George”), is an Oregon limited liability company that operates Revolution Hall and other music and entertainment venues, and associated food and beverage businesses, in Portland, Oregon. Good George has its principal place of business in Portland, Oregon.

2.

The Cincinnati Insurance Company (“Cincinnati”) is an Ohio corporation with its principal place of business in Fairfield, Ohio. Cincinnati conducts business in the State of Oregon including but not limited to selling insurance policies in Multnomah County.

///

///

JURISDICTION AND VENUE

3.

This Court has subject matter jurisdiction because the policy of insurance at issue insures property in this county and was issued in this county.

4.

Venue is proper in this Court because the insurance policy at issue insures property in and was issued in this county.

FACTUAL BACKGROUND

Good George and the Cincinnati Policy

5.

Good George is an independent, locally-based entertainment venue owner and operator. Good George's flagship venue is Revolution Hall, a repurposed former Portland high school in Southeast Portland that features a large theater, a rooftop bar, and several indoor bars and restaurants. Revolution Hall is a vital part of Portland's cultural community, hosting local and touring performers year-round and providing a community gathering place close to downtown Portland.

6.

Good George purchased a commercial property insurance policy from Defendant Cincinnati, numbered EPP 031 83 98, with a policy period of April 9, 2018 through April 9, 2021 (the "Policy").

7.

The Policy provides coverage for "direct 'loss' to Covered Property at the 'premises' caused by or resulting from any Covered Cause of Loss."

8.

"Loss" is defined in the Policy as "accidental physical loss or accidental physical damage."

1 9.

2 The Policy states that “Covered Cause of Loss means direct ‘loss’ unless the
3 ‘loss’ is excluded or limited in this Coverage Part.”

4 10.

5 Because the only causes of loss that are not covered by the Policy are those that
6 are specifically excluded by the Policy, the Policy provides what is commonly known as “all-
7 risk” coverage.

8 11.

9 The Policy contains two “forms” that provide business income and extra expense
10 coverage: 1) the “Building and Personal Property Coverage (Including Special Causes of Loss)”
11 Form, numbered FM 101 05 16; and 2) the “Business Income (and Extra Expense)” Form,
12 numbered FA 213 05 16. Each of these forms provide that Cincinnati “will pay for the actual
13 loss of ‘Business Income’ . . . due to the necessary ‘suspension’ of [the insured’s] ‘operations’
14 during the ‘period of restoration.’”

15 12.

16 The Policy also provides coverage for “Extra Expense,” which is defined in the
17 Policy as “necessary expenses” sustained by the insured “during the ‘period of restoration’ that
18 [the insured] would not have sustained if there had been no direct ‘loss’ to property caused by or
19 resulting from a Covered Cause of Loss.”

20 13.

21 “Suspension” is defined in the Policy as the “slowdown or cessation of [the
22 insured’s] business activities; and [t]hat a part or all of the ‘premises’ is rendered untenable.”

23 14.

24 “Period of restoration” is defined in the Policy as the period that “[b]egins at the
25 time of direct ‘loss’ and [e]nds on the earlier of” the date when the insured’s property “should be

26 ///

1 repaired, rebuilt, or replaced with reasonable speed and similar quality” or when the insured
 2 resumes operations at a new permanent location.

3 15.

4 The Policy contains an “Additional Coverage” for “Civil Authority,” which provides
 5 coverage on the following essential terms: “When a Covered Cause of Loss causes damage to
 6 property other than Covered Property at a ‘premises,’ [Cincinnati] will pay for the actual loss of
 7 Business Income and necessary Extra Expense” that the insured sustains “caused by action of civil
 8 authority that prohibits access to the ‘premises.’”

9 16.

10 The Policy also provides other coverages and terms relevant to the loss sustained
 11 by Good George as described herein, including but not limited to coverage for business income
 12 loss resulting from prevention of “Ingress” and “Egress” and coverage for losses incurred to
 13 protect covered property from further damage.

14 17.

15 The Policy expressly provides that “two or more coverages in this policy [may]
 16 apply to the same ‘loss.’”

17 18.

18 Good George intended to rely on the insurance coverage provided by the Policy to
 19 keep the business alive in the event of a natural disaster, or other event not excluded by the
 20 Policy causing business income and other loss.

21 **The Pandemic**

22 19.

23 In or around December of 2019, a novel coronavirus began to spread in China.
 24 China provided the genetic sequence for what has become known as the 2019 Novel Coronavirus
 25 (also known as SARS-CoV-2) on or about January 12, 2020. The World Health Organization
 26 (“WHO”) later named the disease that may result from infection by SARS-CoV-2, “COVID-19.”

1 20.

2 In January 2020, health officials reported that a Washington State resident tested
3 positive for SARS-CoV-2 infection, and that he was the first known U.S. resident infected by the
4 virus. Officials announced that the first death in the United States from COVID-19 (they
5 believed at the time) occurred in King County, Washington on February 28, 2020.

6 21.

7 The WHO recognized on January 25, 2020, that the 2019 Novel Coronavirus is a
8 “global threat to human health” On January 30, 2020, the WHO Director declared the 2019
9 Novel Coronavirus outbreak “a Public Health Emergency of International Concern.”

10 22.

11 On March 11, 2020, the Director of the WHO determined that the rapidly
12 spreading SARS-CoV-2 virus and COVID-19 disease constituted a worldwide pandemic. WHO
13 saw “alarming levels of spread and severity” of SARS-Cov-2 and COVID-19. WHO
14 representatives stated: “Pandemic is not a word to use lightly or carelessly . . . We have never
15 before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a
16 coronavirus. And we have never before seen a pandemic that can be controlled, at the same
17 time.”

18 23.

19 The United States Center for Disease Control (“CDC”) has stated, among other
20 things, that a “pandemic is a global outbreak of disease. Pandemics happen when a new virus
21 emerges to infect people and can spread between people sustainably. Because there is little to no
22 pre-existing immunity against the new virus, it spreads worldwide.”

23 24.

24 The WHO has explained that SARS-CoV-2 primarily spreads through respiratory
25 droplets expelled when an infected person talks, sneezes, and coughs, and by “fomites,” objects

26 ///

1 and surfaces contaminated by the respiratory droplets. Emerging research suggests also that
 2 SARS-CoV-2 spreads by becoming aerosolized, or through airborne transmission.

3 25.

4 Emerging research on the virus and reports indicate that SARS-CoV-2 physically
 5 infects and can stay alive on surfaces for at least 17 days, a characteristic that renders property
 6 exposed to the contagion potentially unsafe and dangerous. Other research indicates that the
 7 virus may linger on surfaces for up to four weeks in lower temperatures.

8 26.

9 SARS-CoV-2 reportedly has an incubation period of 2–12 days, during which
 10 time it can be spread by an infected person even before symptoms develop in the infected person.
 11 During periods of time relevant to this complaint testing for the SARS-CoV-2 virus, either of
 12 persons or surfaces, was not widely available.

13 27.

14 On March 24, 2020, the World Health Organization indicated that the United
 15 States had the potential to become the center of the SARS-CoV-2 pandemic.

16 28.

17 As of April 11, 2020, all 50 states as well as the U.S. Virgin Islands, the Northern
 18 Mariana Islands, Washington, D.C., Guam and Puerto Rico had received a federal disaster
 19 declaration as a result of the pandemic. As of April 11, 2020, American Samoa was the only
 20 U.S. territory that was not under a major disaster declaration.

21 29.

22 No later than March 13, 2020, at least one person physically present in downtown
 23 Portland, Oregon, where Good George is located, was reported to have tested positive for
 24 infection by SARS-CoV-2.

25 ///

26 ///

Governmental Orders

30.

On March 8, 2020, Oregon Governor Kate Brown issued Executive Order 20-03, declaring a state of emergency as a result of the presence and transmission of SARS-CoV-2, pursuant to ORS 401.165 *et seq.*

31.

On March 12, 2020, Governor Brown issued Executive Order 20-05 (“Order 20-05”), prohibiting gatherings of 250 people or more, and stating, “COVID-19 spreads person-to-person through coughing and sneezing, close personal contact, such as touching or shaking hands, or touching an object or surface with the virus on it, and then touching your mouth, nose, or eyes. The symptoms are fever, cough and difficulty breathing.” Order 20-05 was immediately effective and scheduled to expire on April 8, 2020, unless Governor Brown extended it.

32.

On March 17, 2020, Governor Brown issued Executive Order 20-07 (“Order 20-07”), which among other things, banned gatherings of more than 25 people and prohibited restaurants from offering dine-in or “on-premises” service and consumption of food or beverages. Order 20-07 was immediately effective.

33.

Also on March 17, 2020, Governor Brown issued Executive Order 20-08, which stated in part:

COVID-19 may cause respiratory disease leading to serious illness or death. The World Health Organization considers COVID-19 to be a global pandemic. *COVID-19 spreads person-to-person through coughing, sneezing, close personal contact, including touching a surface with the virus on it and then touching your mouth, nose, or eyes.*

1 State and local public health officials advise that the virus is
 2 circulating in the community and expect the number of cases to
 3 increase. The United States Centers for Disease Control and
 4 Prevention (CDC) reports that COVID-19 is most contagious when
 5 the individual is most symptomatic, but may also spread before
 6 symptoms appear. CDC recommends measures to limit spread of the
 7 disease in the community, including limitations on events and
 8 gatherings.

(Emphasis added.)

34.

9 On March 23, 2020, Governor Brown issued Executive Order 20-12 (“Order 20-
 10 12”), which “prohibit[ed] the operation of” certain businesses, including “social and private
 11 clubs” and “theaters.” Order 20-12 was immediately effective and remained in effect until
 12 Governor Brown terminated it.

35.

14 On April 7, 2020, Governor Brown issued Executive Order 20-14, which
 15 extended Order 20-07.

36.

17 Subsequently Governor Brown implemented a phased reopening process that
 18 impacted all businesses, including Good George, which made reopening dependent on State
 19 approval of county-specific reopening plans. In June, 2020, the State approved a plan that
 20 included allowing restaurants in Multnomah County to offer limited on-premises consumption of
 21 food and beverages beginning on June 19, 2020.

22 **Good George’s Response to the Pandemic**

37.

24 On or about March 12, 2020, Good George closed its premises to customers and
 25 suspended its operations due to the pandemic, the presumptive, likely and actual presence of the
 26 SARS-CoV-2 virus, and Order 20-07 and other governmental directives.

1 38.

2 Since that time, Good George has attempted to mitigate its losses by selling or
3 attempting to sell certain products or services, constituting a significant slowdown if not
4 complete cessation of its operations.

5 39.

6 Good George was forced to lay off or furlough employees, cancel performances,
7 refund ticket costs to customers, cancel orders from suppliers, incur expenses to mitigate loss,
8 and take other actions with a significant impact on its business, its business partners and its
9 community, as a result of the suspension of its operations and Defendant's failure to pay losses
10 covered under the Policy.

11 40.

12 Good George's suspension of its operations is ongoing.

13 **Good George's Losses**

14 41.

15 As a result of the pandemic, including but not limited to loss of customers and
16 loss of employees, and or in the alternative as a result of the presumptive, likely and actual
17 presence of the virus in the community, including employees and customers, and on and about
18 the premises, property at Good George's premises was rendered physically unfit or unsafe for
19 ordinary or intended use, rendered substantially unusable, and/or lost physical utility, and
20 therefore it was necessary for Good George to suspend operations.

21 42.

22 Good George's necessary suspension of its operations for the reasons described
23 above, beginning on or about March 12, 2020, and continuing to date, was caused by direct
24 accidental physical loss to property at its covered premises.

25 ///

26 ///

1 43.

2 Good George has incurred actual loss of business income due to the suspension of
3 its operations as described above, in an amount to be proven at trial but not less than \$495,000
4 (the “Pandemic Time Element Loss”).

5 44.

6 Good George has also incurred necessary expenses following the suspension of its
7 operations described above that it would not have incurred if there had been no accidental direct
8 physical loss to its property as described above. Good George incurred these extra expenses in
9 order to reduce its business income loss including minimizing the suspension of its business, and
10 to prevent further damage to the property, in an amount to be proven at trial but not less than
11 \$5,000 (the “Pandemic Extra Expense Loss”).

12 45.

13 And or in the alternative, the governmental orders described above and other
14 similar orders constitute multiple instances of “action of civil authority” within the meaning of
15 the Policy on the basis that a “Covered Cause of Loss”—the pandemic and/or virus —caused
16 “damage” to property other than the insured’s property; that the orders “prohibited access” to the
17 insured’s premises; that the orders “prohibited access” to the “area immediately surrounding” the
18 “damaged property” “as a result of the damage” by limiting gatherings and other public and
19 private activities; and that the orders were issued “in response to dangerous physical conditions”
20 resulting from the “damage:” the pandemic and/or presence of the virus.

21 46.

22 And or in the alternative the pandemic, and or in the alternative the presence of
23 the virus in the community, employees and customers other than on the premises, prevented
24 existing ingress and egress to the insured’s property due to direct loss to property contiguous to
25 the insured’s property.

26 ///

1 47.

2 On or about March 20, 2020, Good George informed Cincinnati of its claim for
3 Policy benefits as a result of the Pandemic Time Element Loss and the Pandemic Extra Expense
4 Loss.

5 48.

6 On or about May 27, 2020, Cincinnati denied Good George's claim for Pandemic
7 Time Element Loss and Pandemic Extra Expense Loss.

8 49.

9 Following the suspension of its business beginning on or about March 12, 2020,
10 and during the period of Pandemic Time Element Loss in which Good George was attempting to
11 mitigate its losses through partial resumption of some operations, Good George experienced an
12 occurrence and cause of loss separate from the cause of Pandemic Time Element Loss, which
13 itself caused time element loss and extra expense (the "Civil Commotion Time Element Loss"
14 and "Civil Commotion Extra Expense Loss"), which were reported to Cincinnati under the
15 Policy. Neither the Civil Commotion Time Element Loss nor the Civil Commotion Extra
16 Expense Loss are the subject of this lawsuit at this time. Good George reserves the right to
17 amend this lawsuit to include claims relating to the Civil Commotion Time Element Loss and the
18 Civil Commotion Extra Expense Loss.

19 **FIRST CLAIM FOR RELIEF**

20 **(Breach of Contract)**

21 50.

22 Good George realleges and incorporates each preceding paragraph as if fully set
23 forth herein.

24 ///

25 ///

26 ///

1 51.

2 Good George paid substantial premiums to Cincinnati in consideration for
3 Cincinnati's promise to pay Good George's claims for business income loss and extra expense
4 covered by the Policy. The Policy constitutes a contract between the parties.

5 52.

6 Good George complied with all conditions precedent to coverage under the Policy
7 with regard to the Pandemic Time Element Loss and the Pandemic Extra Expense Loss, except
8 for any obligations that were waived or excused.

9 53.

10 Cincinnati breached its express and implied duties under the Policy by, among
11 other things, denying coverage under the terms of the Policy for the Pandemic Time Element
12 Loss and the Pandemic Extra Expense Loss.

13 54.

14 By breaching the terms of the Policy, Cincinnati has caused and continues to
15 cause Good George damages in an amount to be proven at trial, but not less than \$500,000.

16 55.

17 As a result of Cincinnati's breach, Good George has been required to retain
18 counsel and incur attorney fees and other costs, for which Cincinnati is liable pursuant to, among
19 other laws, ORS 742.061.

20 **SECOND CLAIM FOR RELIEF**

21 **(Breach of the Covenant of Good Faith and Fair Dealing)**

22 56.

23 Good George realleges and incorporates each preceding paragraph as if fully set
24 forth herein.

25 ///

26 ///

1 57.

2 Every contract, including the Policy, contains an obligation of good faith and fair
3 dealing, performance, and enforcement. Cincinnati had discretion in its performance of certain
4 obligations under the Policy.

5 58.

6 Cincinnati's refusal to pay Policy benefits to Good George for the Pandemic Time
7 Element Loss and Pandemic Extra Expense Loss was unreasonable and without proper cause and
8 therefore breached the covenant of good faith and fair dealing inherent in the Policy.

9 59.

10 Cincinnati breached its implied duties of good faith and fair dealing in the
11 performance of its obligations under the Policy in at least the following ways: 1) failing to
12 adequately investigate Good George's claim, including failing to adopt reasonable interpretations
13 of undefined and disputed terms in the Policy; 2) failing to provide a proper explanation for the
14 basis relied on for its denial of Good George's claim in relation to the facts or applicable law; 3)
15 by misrepresenting facts and the terms of the Policy in an effort to improperly deny or limit its
16 coverage obligations; 4) by compelling Good George to initiate this litigation in order to recover
17 Policy benefits; and 5) on information and belief, by failing to adopt and implement reasonable
18 standards for the prompt and correct investigation of Good George's claim.

19 60.

20 As a direct result of Cincinnati's breach of the covenant of good faith and fair
21 dealing, Good George has been damaged in an amount to be proven at trial.

22 61.

23 As a direct result of Cincinnati's conduct Good George has been required to retain
24 the services of an attorney and to incur attorney fees and other costs resulting from the need to
25 contest Cincinnati's denial.

26 ///

1 62.

2 As a direct result of the conduct of Cincinnati as alleged above, Good George has
3 been damaged and injured, and is therefore entitled to recover:

4 a) reasonable attorney fees incurred by Good George in obtaining Policy benefits
5 in an amount to be proved at trial under applicable law, including ORS 742.061;

6 b) costs and expenses associated with the need to contest Cincinnati's denial that
7 are not recoverable under ORS 742.061; and

8 c) an award of consequential damages resulting from Cincinnati's conduct, in an
9 amount to be proven at trial.

10 **THIRD CLAIM FOR RELIEF**

11 **(Declaratory Judgment)**

12 63.

13 Good George realleges and incorporates each preceding paragraphs as if fully set
14 forth herein.

15 64.

16 A justiciable controversy exists between Good George and Cincinnati regarding
17 coverage under the Policy for the business income loss and extra expense suffered by Good
18 George as a result of the Pandemic Time Element Loss and the Pandemic Extra Expense Loss.
19 The Court can resolve the controversy through entry of a Judgment declaring the rights and
20 liabilities of Good George and Cincinnati relative to coverage under the Policy for Good
21 George's business income loss and extra expense. Good George requests appropriate declaratory
22 relief to establish its rights.

23 65.

24 For the reasons set forth above, Good George is entitled to a declaration that
25 Cincinnati has breached the Policy and that Cincinnati is obligated to cover Good George's
26 business income losses up to the Policy's limits.

DEMAND FOR JURY TRIAL

66.

Plaintiff demands a trial by jury on all claims for which a right to jury trial applies.

PRAYER FOR RELIEF

WHEREFORE, Good George prays for judgment as follows:

1. On its First Claim for Relief, for judgment in favor of Good George and against Cincinnati in an amount to be proven at trial, but not less than \$500,000;

2. On its Second Claim for Relief, for judgment in favor of Good George and against Cincinnati in an amount to be proven at trial;

3. On its Third Claim for Relief, for a judgment declaring that Cincinnati has breached the Policy and that Cincinnati is obligated to cover Good George's business income losses up to the Policy limits;

4. For its reasonable attorney fees and costs incurred pursuant to applicable law including ORS 742.061;

5. For pre-judgement interest at the highest applicable statutory rate; and

///

///

///

///

///

///

///

///

///

///

1 6. For such other and further relief as the Court deems just, equitable, and
2 proper.

3 DATED this 2nd day of September, 2020.

4 MILLER NASH GRAHAM & DUNN LLP

5
6 s/ Seth H. Row

7 Seth H. Row, OSB No. 021845

8 seth.row@millernash.com

9 Katelyn J. Fulton, OSB No. 183404

10 katelyn.fulton@millernash.com

11 Shanelle Honda, OSB No. 131139

12 shanelle.honda@millernash.com

13 Phone: 503.224.5858

14 Fax: 503.224.0155

15 Attorneys for Plaintiff Good George LLC

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GOOD GEORGE, LLC,

Plaintiff,

vs.

Case No. **20CV30519**

CERTIFICATE OF SERVICE

THE CINCINNATI INSURANCE COMPANY,

Defendant.

STATE OF OREGON

County of Multnomah

ss.

I, Edmund Knowles, hereby certify that I am a competent person 18 years of age or older, a resident of the State of Oregon and that I am not a party to nor an attorney for any party in the within named action; that I made service of a true copy of:

Summons and Complaint

CORPORATE SERVICE - Pursuant to ORCP 7D(3):

Upon **THE CINCINNATI INSURANCE COMPANY**, by personal service upon Rylynn Poole, the clerk on duty in the office of the registered agent, National Registered Agents, Inc., 780 Commercial St. SE Ste 100, Salem, OR 97301 on September 03, 2020 at 1:20 PM.

I declare under the penalty of perjury that the above statement is true and correct.

Dated this 8th day of Sept, 2020.



352090

X Edmund Knowles
Edmund Knowles
Nationwide Process Service, Inc.
1201 S.W. 12th Avenue, Suite 300
Portland, OR 97205
503-241-0636

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GOOD GEORGE LLC, an Oregon limited
liability company,

Plaintiff,

v.

THE CINCINNATI INSURANCE
COMPANY, an Ohio corporation,

Defendant.

Case No. 20CV30519

SUMMONS

TO: The Cincinnati Insurance Company
c/o National Registered Agents, Inc.
780 Commercial Street, SE, Suite 100
Salem, Oregon 97301

Pursuant to ORCP 7 C(2), YOU ARE REQUIRED TO APPEAR AND DEFEND
the complaint filed against you by plaintiff Good George LLC within 30 days from the date of
service of this summons on you. Plaintiff's claims are stated in the written complaint, a copy of
which is served upon you with this summons. If you fail to appear within the required time,
plaintiff will apply to the court for the relief demanded in the complaint.

NOTICE TO DEFENDANT:

READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To
"appear," you must file with the court a legal document called a "motion" or an "answer." The
"motion" or "answer" must be given to the court clerk or administrator within 30 days along with

1 the required filing fee. It must be in proper form and have proof of service on the plaintiff's
2 attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

3 If you have questions, you should see an attorney immediately. If you need help
4 in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at
5 www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-
6 free elsewhere in Oregon at (800) 452-7636

7
8 DATED this 3rd day of September, 2020.

9 MILLER NASH GRAHAM & DUNN LLP

10
11 
12

13
14 Seth H. Row, OSB No. 021845
15 seth.row@millernash.com
16 Katelyn J. Fulton, OSB No. 183404
17 katelyn.fulton@millernash.com
18 Shanelle Honda, OSB No. 131139
19 shanelle.honda@millernash.com
20 Phone: 503.224.5858
21 Fax: 503.224.0155

22 Attorneys for Plaintiff Good George LLC
23
24
25
26